

What is the nature and extent of claimant's injury, and, more particularly, is claimant entitled to an award based upon two scheduled injuries under K.S.A. 44-510d for the injuries suffered to his knees, or is he entitled to a permanent partial general disability under K.S.A. 44-510e for the injuries to his knees and his left shoulder?

Claimant contends that he has proven that the injuries to his knees occurred simultaneously over a period of time, therefore, entitling him to a permanent partial general disability under K.S.A. 44-510e. Claimant further argues that he suffered injury to his left shoulder while performing calisthenics. Respondent contends claimant has failed to prove that he suffered injury to his shoulder during calisthenics. Respondent further contends that claimant's injuries to his knees occurred on separate days as the result of separate specific traumas and, therefore, claimant is entitled to a scheduled injury award for each knee under K.S.A. 44-510d.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, the Board finds the Award of the Administrative Law Judge should be affirmed.

The Award sets out findings of fact and conclusions of law in significant detail. It is not necessary to repeat those herein. The Board adopts the findings and conclusions as its own.

The Administrative Law Judge determined that claimant had suffered scheduled injuries to his knees during separate training sessions, two days apart. Claimant testified that he injured his right knee on July 24, 2001, while performing what he described as drop and rolls. He then testified that two days later, on July 26, 2001, while performing the same type of practice exercise, he injured his left knee. While claimant argues that his knees were aggravated simultaneously, neither Lee R. Dorey, M.D. (board certified in orthopedic surgery) nor C. Reiff Brown, M.D. (also board certified in orthopedic surgery), both of whom examined claimant, supported claimant's contentions.

Dr. Dorey was unable to testify as to whether the injuries to claimant's knees during the self-defense classes discussed by claimant occurred on one day or whether the injuries occurred at separate times. Dr. Brown, however, testified that the injuries during the self-defense classes aggravated claimant's preexisting knee problems and that claimant appeared to have suffered two separate injuries to his knees on different days. The Administrative Law Judge determined, and the Board agrees, that claimant's award is controlled by K.S.A. 44-510d, which allows for awards for specific injuries based upon the schedule contained therein. K.S.A. 44-510d(b) states that whenever the employee is entitled to compensation for a specific injury under the schedule,

the same shall be exclusive of all other compensation except for the benefits provided in K.S.A. 44-510h and K.S.A. 44-510i and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability. . . .

In this instance, the Board finds that claimant has proven that he suffered injuries to each knee during two separate incidents, resulting in an award of two scheduled injuries.

Additionally, the Board finds, as did the Administrative Law Judge, that claimant has failed to prove that he suffered any permanent impairment to his shoulder as a result of the traumas associated with claimant's calisthenics on July 16, 2001.

The Board, therefore, finds that the Award of the Administrative Law Judge awarding claimant a 2 percent impairment to each lower extremity for the separate injuries to his knees should be affirmed.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated October 7, 2003, is hereby affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Matthew L. Bretz, Attorney for Claimant  
Richard L. Friedeman, Attorney for Respondent  
Bruce E. Moore, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director